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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/995,058 | 11/26/2001 | Jason K. Schnitzer | 24359-011 | 9530 |
| 22850 | 7590 | 05/15/2006 | EXAMINER | |
| OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314 | | | TRAN, NGHI V | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2151 | |

DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,058

Applicant(s)

SCHNITZER ET AL.

Examiner

Nghi V. Tran

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-17 and 19-22 is/are pending in the application.
- 4a) Of the above claim(s) 11 -17 AND 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 AND 3-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1 and 3-10 in the reply filed on April 07, 2006 is acknowledged. The traversal is on the ground(s) that the two different subclass search would not place a serious burden on the Examiner. This is not found persuasive because the Examiner requires and/or considers to search on both subclass which create a serious burden on the Examiner.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 3-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dziekan et al., U.S. Patent No. 6,704,288 (hereinafter Dziekan), in view of Agarwal et al., U.S. Patent Application Publication No. 2003/0028642 (hereinafter Agarwal).

4. With respect to claims 1 and 8, Dziekan teaches a system for use with a broadband network [fig.1], the system comprising:

- a data collector [i.e. QoS monitor **140**] coupled to obtain network performance metrics from network elements in the at least a portion of the broadband network [i.e. concerned with collecting network performance metrics, see col.4, ln.58 – col.5, ln.4]; and
- logic to measure the performance metrics by applying device-specific information for the network elements from which the network performance metrics were obtained [i.e. other measurements that may be made at either the physical or MAC level layers, see col.5, ln.36-58].

However, Dziekan does not explicitly show logic to normalize the performance metrics.

In a managing system, Agarwal discloses or suggests logic to normalize the performance metrics [i.e. normalizes the metrics, see paragraph 0078].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify Dziekan in view of Agarwal by normalizing the performance metrics because this feature leads to metrics on the global usage of each resource class, as well as the usage by each customer [Agarwal, paragraph 0078]. It is for this reason that one of ordinary skill in the art at the time of the invention would have been motivated in order to directly adjust on a per client-basis [Agarwal, paragraph 0010].

5. With respect to claims 3 and 10, Dziekan further teaches wherein the device-specific information includes at least one of make, model, hardware version, software

Art Unit: 2151

version, and element settings associated with each of the network elements [i.e. other measurements that may be made at either the physical or MAC level layers, see col.5, ln.36-58 and col.10, ln.27-57].

6. With respect to claims 4 and 9, Dzieka further teaches wherein the data collector is further configured to obtain at least one of Management Information Base objects and command line interface information from the network elements and the logic is further to determine the device-specific information from the at least one of Management Information Base objects and command line interface information [i.e. authorized to access MIB objects of the network elements, see col.4, ln.5-34].

7. With respect to claim 5, Dzieka further teaches wherein the network performance metrics are remotely-accessible standard management instrumentation [figs.1-2].

8. With respect to claim 6, Dzieka further teaches wherein the broadband network is a Data Over Cable Service Interface Specification (DOCSIS) network [col.10, ln.27-57] and the network performance metrics include at least one of signal-to-noise ration [col.7, ln.17], power level, equalizer coefficients setting information, error information, counter information, bandwidth, quality of service, latency, and jitter [i.e. QoS, BER, FER, see col.4, ln.58 – col.5, ln.4].

9. With respect to claim 7, Dzieka further teaches wherein the logic comprises software instructions and a computer processor configured to read and execute the software instructions [col.5, ln.48 - col.6, ln.2].

Response to Arguments

10. Applicant's arguments with respect to claims 1 and 3-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nghi V. Tran whose telephone number is (571) 272-4067. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER